

SERVICE DATE - MAY 25, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33877

ILLINOIS CENTRAL RAILROAD COMPANY--CONSTRUCTION AND OPERATION
EXEMPTION--IN EAST BATON ROUGE PARISH, LA

Decided: May 24, 2001

By petition filed on November 29, 2000, Illinois Central Railroad Company (IC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a line of railroad, approximately 3.2 miles in length, in East Baton Rouge Parish, LA, to connect IC's Maryland Industrial Lead with the Baton Rouge Polyolefins plant of ExxonMobil Chemical Company (ExxonMobil). On December 19, 2000, The Kansas City Southern Railway Company (KCS) filed a reply to the petition, to which IC responded on January 8, 2001. In a decision served March 9, 2001, the Board instituted a proceeding under 49 U.S.C. 10502(b) to consider IC's petition and the issues raised in KCS's reply.

KCS served discovery requests on IC on February 8, 2001. IC responded on February 26, 2001. On March 5, 2001, KCS filed a "First Motion to Compel Discovery Responses and for Declaration of Admissions." IC replied to the motion on March 26, 2001. On March 30, 2001, KCS filed a motion for leave to file a reply to IC's reply, accompanied by a tendered reply. IC replied to that motion on April 19, 2001. This decision considers the motion to compel.

PRELIMINARY MATTER

KCS's request for leave to file a reply to IC's reply will be denied and the tendered reply rejected. KCS bases its request on arguments that IC has misstated several critical facts and has advanced novel policy arguments that KCS could not have anticipated. KCS's arguments are unsupported. In any event, the motion to compel and reply, including a copy of the discovery requests and replies thereto, afford ample basis for a decision.

DISCUSSION AND CONCLUSIONS

Included in KCS's discovery requests were 36 interrogatories (approximately half of which contained multiple parts), 10 document production requests, and 25 requests for admission.¹ IC answered 11 of the interrogatories and 4 of the requests for admission, but otherwise declined to respond. IC objected to the timing of the discovery requests, to attempts to address environmental issues, and to efforts to elicit information as to matters it deemed

¹ The requests for admission are numbered 1 to 26, but there is no request number 12.

irrelevant. In its motion to compel, KCS disputes IC's claims and argues that it seeks "relevant, probative information." It seeks a Board order compelling IC to provide full, complete, and responsive answers to its discovery.² IC responds that the real purpose of KCS's discovery is to delay and obstruct the project.

The motion to compel will be denied.

Environmental matters. Nearly half of the discovery requests relate to the environmental impact of the proposed line construction. According to KCS, the Board's discovery rules contain no provisions excluding environmental issues from the scope of valid discovery requests and IC cites no precedent supporting its objections in this area. IC responds that environmental review differs from a consideration of substantive transportation issues where litigants develop an evidentiary record through an adversarial process and the Board renders a decision based on the parties' presentations. Unlike substantive issues, IC asserts, environmental issues are considered by the Board's Section of Environmental Analysis (SEA), which generates an independent, comprehensive record and analysis, solicits public comments, and renders recommendations to the Board after reviewing the comments.

IC is, of course, correct. The Board is charged under the National Environmental Policy Act with preparing the environmental assessment or environmental impact statement required when we take action. We will obtain whatever information we need from the proponent of the action. An example is the environmental report required by our regulations. KCS may comment on the draft environmental review we propose in this case, but it does not require discovery to avail itself of that right.

Relevancy of issues. Many of KCS's informational requests, as well as a justification for its motion to compel, appear to be based on a belief that IC bears a burden of proving a "public need" for its proposed construction and operation. That belief apparently underlies the numerous requests for: (1) information regarding ExxonMobil's need for rail car storage and IC's or ExxonMobil's plans to construct car storage facilities in the Baton Rouge area; (2) information regarding any studies, discussions, or consultations IC has had with other industries located on the proposed line or in the area relative to service for those industries; and (3) information regarding current service capacity and past service problems. Neither under the exemption criteria of section 10502 nor under the prior approval requirements of section 10901 is there a requirement of a showing of public need for the facilities proposed to be constructed. See, e.g., Kansas City Southern Railroad Company--Construction and Operation Exemption--Geismar

² Citing the Board's regulations at 49 CFR 1114.27, KCS argues that the matter contained in the requests for admission is deemed admitted because IC failed to respond or to object to it in writing within 15 days. The argument arises from a dispute as to when the 15-day period runs. There is no need to consider and resolve the dispute. It is clear that IC does not admit the subject matter and should not be deemed to do so.

Industrial Area Near Gonzales and Sorrento, LA, Finance Docket No. 32530 (ICC served June 30, 1995), at pp. 5-6. IC need not demonstrate insufficient service capacity, service failures, a shortage of storage capacity, or multiple industries' support for its proposal.³ KCS's requests for information pertaining to public need are irrelevant to our review under the statute.

A number of KCS's other informational requests fail to focus on material matters and, in addition, are so broad as to unreasonably burden IC were it to be required to reply to them. For instance, Interrogatory No. 16 requests IC to "[d]escribe in detail each oral or written communication between IC and ExxonMobil relating to this proceeding. . . ." Document Request No. 1 asks IC to provide "[a]ll workpapers relating to the IC Petition in this proceeding." Document Request No. 6 seeks "[a]ll documents provided to Federal, state or local agencies or entities relating to the project" Document Request No. 10 seeks "[m]inutes of any meeting of the board of directors of IC at which matters relating to this proceeding or to IC's proposal to construct or operate the Proposed Line were discussed." IC will not be compelled to respond to such requests.

Timing of discovery. IC complains that KCS initiated discovery long after the record in the proceeding had closed. IC contends that KCS's actions are dilatory and disruptive. KCS responds that there are no Board regulations or precedent that prohibit it from serving discovery when it did. KCS argues that IC's objection, if upheld, would all but eliminate the possibility of meaningful use of discovery procedures in exemption proceedings.

The lateness of KCS's filings here tends to impeach its representations that it needs the information it seeks. KCS served its informational requests on IC 10 weeks after IC had filed its petition and more than 7 weeks after KCS had filed a detailed reply to IC's petition. In its reply, KCS made no mention of any need for discovery. This tends to support a conclusion that KCS did not serve its discovery in an attempt to elicit information it needed in order to reply to the petitioner's case in chief, which is the essential purpose of discovery.

The decision of March 9, 2001, instituting a proceeding under section 10502(b), stated that there did not appear to be a need for the parties to submit additional evidence. KCS has not identified any genuine issues that require further development. The record as now made contains sufficient evidence and argument upon which the Board can make an informed decision. No good reason appears to compel IC to respond further to discovery in this proceeding. Accordingly, KCS's motion to compel will be denied.

³ Nonetheless, KCS has presented extensive evidence and argument regarding its service and storage capabilities and record.

It is ordered:

1. KCS's motion for leave to file a reply to IC's reply is denied, and KCS's tendered reply to IC's reply is rejected.
2. KCS's motion to compel discovery responses and for a declaration of admissions is denied.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary